

DOCKET FILE COPY ORIGINAL

ORIGINAL

LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.
SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

August 21, 2001

RECEIVED

WWW.LSL-LAW.COM

BRIAN M. MADDEN
(202) 416-6770

AUG 21 2001

E-MAIL
BMADDEN@LSL-LAW.COM

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA FEDERAL EXPRESS

Ms. Magalie R. Salas
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

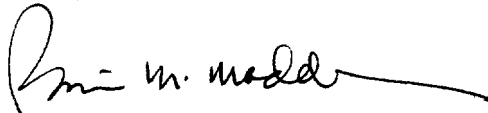
95-91

Dear Ms. Salas:

On behalf of Entercom Communications Corp., there is transmitted herewith an original and four copies of its *Comments* with respect to the separate requests for Special Temporary Authority filed by XM Radio Inc. (FCC File No. SAT-STA-200010712-00063) and by Sirius Satellite Radio Inc. (FCC File No. SAT-STA-200010724-00064) to operate digital audio radio service terrestrial repeater stations.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very truly yours,


Brian M. Madden

BMM/tlm
ENCLOSURE

cc: Bruce Jacobs, Esq.
Carl Frank, Esq.

No. of Copies rec'd 074
ENCLOSURE

BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

AUG 21 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)

Request by XM Radio Inc.)

)

and Sirius Satellite Radio Inc.)

IB Docket No. 95-91

for Special Temporary Authority to Operate)

FCC File No. SAT-STA-20010712-00063

Digital Audio Radio Service Terrestrial Repeaters)

FCC File No. SAT-STA-20010724-00064

To: Chief, Allocations Branch
Mass Media Bureau

**COMMENTS OF
ENTERCOM COMMUNICATIONS CORP.**

Entercom Communications Corp. ("Entercom"), licensee of 95 broadcast radio stations in 18 markets, by its attorneys, hereby submits comments in opposition to the above-captioned requests of XM Radio Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius") for special temporary authority ("STA") to operate digital audio radio service terrestrial repeaters (the "STA Requests"). The terrestrial repeater networks that XM and Sirius propose to construct pursuant to their STA Requests are not "gap fillers" for satellite-delivered service, as the Commission proposed to authorize,¹ but rather, the systems proposed in the STA Requests -- and particularly in XM's unsubstantiated request to operate no fewer than 778 high power terrestrial repeaters at

¹Notice of Proposed Rulemaking, *In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 11 FCC Rcd 1, 18 (1995) (the "NPRM").

powers from 2 kW to 40 kW in 61 markets nationwide -- would allow XM and Sirius to provide essentially a terrestrial-based radio service, in contravention of the Commission's underlying intentions as set forth in IB Docket No. 95-91; in contravention of XM's and Sirius's purported intentions of offering a satellite-delivered service in which the terrestrial repeaters will serve only to "fill gaps" in areas where it may be difficult to receive DARS signals transmitted by satellite; and in contravention of the public interest, since such a new terrestrial system would directly threaten the viability of currently-licensed terrestrial broadcasters, particularly in smaller markets where traditional radio broadcasters already face difficult financial challenges to their continued operations.

The Commission has been unwavering in proposing that terrestrial repeaters used in connection with SDARS be implemented as "gap-fillers," in "urban canyons and other areas where it may be difficult to receive DARS signals transmitted by a satellite."² The Commission has proposed that the "terrestrial gap-fillers" be limited to retransmission of the information sent by the satellite to "overcome the effects of signal blockage and multipath interference."³ In addressing the concerns expressed in IB Docket 95-91, the Commission offered its assurance that it proposed to prohibit the use of terrestrial gap-fillers "except in conjunction with an operating satellite DARS system to ensure its complementary nature and *so that there would be no*

²NPRM at 18, and *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, 12 FCC Rcd 5754, 5810 (1997) (the "*Report and Order*").

³NPRM at 18, and *Report and Order* at 5811.

transformation of satellite DARS into an independent terrestrial DARS network” (emphasis added).⁴ The STA Requests fail to provide *any* information that demonstrates the purported necessity for deploying such extensive systems of high powered terrestrial repeaters, and nowhere does XM or Sirius show that these extensive proposed systems of terrestrial repeaters will be used only as “gap-fillers,” in accordance with the manner in which the Commission has consistently intended. The Commission should not permit a further proliferation of repeater stations, beyond those actually constructed as of this date under the existing experimental authorizations, without adoption of formal service and technical rules for terrestrial repeaters. Those rules should not permit SDARS operators unfettered rights to establish repeaters without a specific demonstration of need due to signal obstruction. Not only would unregulated construction of an unlimited number of high-powered repeater stations create interference to other spectrum users, as, for example, alleged by wireless licensees operating on adjacent spectrum, but such blanket authority would lead to a fundamental change in the nature of the SDARS service, as discussed further herein.

The Commission has tentatively concluded that it will prohibit the use of terrestrial repeaters to transmit locally originated programming.⁵ However, on April 25, 2001, XM submitted draft rules for the operation of SDARS terrestrial repeaters that would allow SDARS operators to circumvent the Commission’s intent and allow locally-originated

⁴*Id.*

⁵*Report and Order* at 5812.

programming to be broadcast on SDARS through the use of the terrestrial repeater network. Specifically, XM's proposed Section 25.144 of the Commission's rules provides that "[t]errestrial repeaters shall not be used to originate programming *not also transmitted from authorized DARS satellites*" (emphasis added).⁶ The artful phrasing of this rule as proposed by XM conceivably allows SDARS operators to use a terrestrial repeater system to include programming, including local commercials, targeted to local audiences and originated locally as long as such signal was first uploaded to its DARS satellite for retransmission. In the comments being filed in this proceeding by the National Association of Broadcasters ("*Comments of NAB*"), which Entercom joins and supports, one possible method of such localized operation is illustrated. *See Comments of NAB* at 13-14. The use of currently available technology in this manner would defeat the Commission's stated intention to authorize a nationally-based service to complement, and not destroy, existing terrestrial local AM and FM radio services. SDARS was established to offer new service particularly for niche audiences and geographically-isolated audiences that are underserved by exiting broadcasters.⁷ In essence, a grant of the STA Requests in connection with XM's draft rules would allow SDARS licensees to operate virtually as terrestrial broadcasters, inserting local advertising and other programming and competing directly with established terrestrial broadcasters in their local markets for local listeners. Entercom does not ask that competition in the markets in which it operates be curtailed; however, the Commission never intended to authorize an additional terrestrial broadcasting service that would

⁶*Ex Parte Submission of XM Radio Inc.* in IB Docket 95-91 (April 25, 2001) at Exhibit 1.

⁷*NPRM* at 2.

compete directly with individual local AM and FM stations on the local level when it established the nationwide SDARS service.

Entercom has emphasized previously in filings with the Commission concerning SDARS that all radio stations require an adequate revenue base to sustain the non-entertainment programming and community-based activities for which they are licensed to serve the public convenience and necessity.⁸ It is inevitable that when more stations are allowed to enter a market, the market shares available to a particular station in a market decrease, and potential advertising revenues are reduced. The Commission carefully weighed the effect of any new service on local broadcasters in determining that a “new radio service . . . [with] national distribution . . .” would serve the public interest.⁹

The use of a massive network of hundreds of high-powered repeaters, located in a manner to blanket urban areas without any demonstration of service deficiencies, changes the equation as analyzed by the Commission. As observed by the NAB, the proposal would now create a terrestrial-based network concentrated in metropolitan areas which is fully capable of operating independent of any satellite delivery. In the Boston metropolitan area, where Entercom operates five radio stations, XM proposes 66 repeaters with power greater than 2 kW, and more than half of those with power greater than 12 kW. Entercom believes that the Commission would not have established SDARS had the initial proposal involved such an extensive terrestrial operation, and it must not now allow SDARS to be transformed by the STA Requests into an

⁸See Comments of Entercom (f/k/a Entertainment Communications, Inc.) filed in IB Docket 95-91 at 2.

⁹*Report and Order* at 5758.

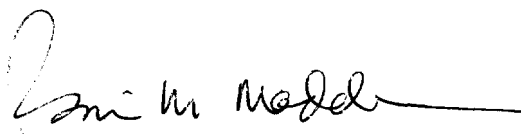
entirely different service than originally conceived. There will inevitably be some need for repeaters in cases of actual service impediments. However, any repeater authorized for use to complement SDARS service must be strictly limited to demonstrated service deficiencies, and restricted in use to preclude the transmission of locally-originated programming and to allow only the retransmission of the unaltered SDARS signal simultaneous with its transmission to consumer receivers nation-wide.

By the STA Requests, XM and Sirius seek to further expand their repeater networks beyond that appropriate for experimental analysis, even before the Commission has adopted service rules for such facilities. Entercom agrees with the NAB that XM and Sirius must be deemed to have constructed the existing repeater stations at their own risk, with no entitlement to any favorable equitable claims when the Commission establishes appropriately strict service limitations on the use of such repeaters. *See Comments of NAB* at 10-11. There is no substantiation in the STA Requests for the necessity of utilizing such a substantial number of terrestrial repeaters in connection with SDARS, and the clear inference is that XM and Sirius intend that the requested terrestrial repeater systems serve as backup, or worse, as primary broadcast systems, with the potential to offer terrestrial locally-originated programming, rather

than to serve as the "gap-fillers" that the Commission intended. For these reasons, Entercom opposes approval of the STA Requests.

ENTERCOM COMMUNICATIONS CORP.

By:



Brian M. Madden
Christopher J. Sova

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809

August 21, 2001

Its Attorneys

CERTIFICATE OF SERVICE

I, Tamara L. Mariner hereby certify that true and correct copies of the foregoing
"Comments of Entercom Communications Corp." was sent by U.S. Mail this 22nd day of
August 2001 to the following:

Carl R. Frank, Esq.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Bruce D. Jacobs, Esq.
Shaw Pittman
2300 N Street, NW
Washington, DC 20037



Tamara L. Mariner